

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JESSICA M. REDMAN, ALEC S.  
REDMAN, and ALYSSA J. REDMAN, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KRISTINA MARIE OLEKSY,

Respondent-Appellant.

UNPUBLISHED

May 15, 2008

No. 281159

Iosco Circuit Court

Family Division

LC No. 2002-004137-NA

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Before: Fort Hood, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the children under MCL 712A.19b(3)(g), (j), and (m). For the reasons more fully set forth herein we affirm.

Respondent had an extensive history with petitioner. Petitioner had investigated allegations against respondent of drug use and neglect of the children on 11 occasions, resulting in four substantiated referrals and three petitions. Petitioner provided substantial services to respondent beginning in 2002, including referring her to drug rehabilitation programs and substance abuse counseling, but there was no evidence that respondent had successfully completed any of these services. On November 4, 2006, respondent was rushed to the hospital, hemorrhaging. Respondent informed the nurse on duty that she was pregnant, had used cocaine when she went into labor, and had used marijuana before going into labor. Respondent gave birth to a stillborn child. An autopsy report concluded that the fetus died in utero, there were no developmental anomalies or injuries contributing to its death, and there was benzoylecgonine, diazepam, and nordiazepam in its blood.

Ten days after the stillbirth, petitioner filed a permanent custody petition, seeking termination of the parental rights of respondent under §§ 19b(3)(g), (i), and (j). At the adjudication hearing, respondent admitted to the first two allegations in the permanent custody petition, which concerned her stillborn fetus, the drugs in its system, and her admission to a state police trooper that she had used drugs before the birth. The court found that respondent's plea was knowing and voluntary and that, based on her plea, it had jurisdiction over the children. In

September 2007, the court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g), (j), and (m).

Respondent first argues on appeal that her admissions were insufficient for the court to establish its jurisdiction over the children. Because respondent challenges the court's subject matter jurisdiction, which is always subject to appeal, this issue is preserved. *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005); *Matter of Youmans*, 156 Mich App 679, 684; 401 NW2d 905 (1986). Respondent argues that her treatment of her stillborn child was not an appropriate consideration for the court's establishing jurisdiction over the children subject to the petition, contending that the fetus was not a child to which a finding of neglect could attach. In *Matter of Baby X*, 97 Mich App 111, 116; 293 NW2d 736 (1980), this Court concluded that prenatal treatment can be considered probative of neglect of the unborn child. Under the theory of anticipatory neglect, how a parent treats one child is probative, though not determinative, of how that parent will treat another. *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973). It follows then that the neglect respondent showed in the manner she treated her fetus could be relied upon to establish her neglect of the other children. Respondent's admissions, which established that she was a cocaine user who abused drugs while she was pregnant, are legally sufficient to establish that the children's home, because of neglect, cruelty, drunkenness, or depravity, was an unfit place in which to live. Accordingly, the trial court did not err when it found that it had jurisdiction over the children.

Respondent also argues that her counsel's performance was deficient because the court relied upon her admissions to the permanent custody petition in erroneously establishing jurisdiction over the children and that, but for counsel's error, she would not have been subject to the instant proceedings. To prevail on a claim of ineffective assistance of counsel, the respondent must show that her trial counsel's performance was deficient and that there is a reasonable probability that, but for counsel's unprofessional error, the result would have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2001). A lawyer does not render ineffective assistance of counsel by failing to advocate a meritless position. *Id.* at 209. Further, this Court does not substitute its judgment for that of a respondent's counsel in matters of trial strategy. *Matter of Trowbridge*, 155 Mich App 785, 787; 401 NW2d 65 (1986).

Having already determined that respondent's admissions were sufficient for the court to establish its jurisdiction over the children, respondent's counsel's performance was not deficient. Further, counsel's advice may have been intended as a matter of trial strategy. Because the initial petition requested termination, counsel may have sought to limit the evidence introduced in the adjudicatory phase in order to limit the evidence that could have served as a basis for termination. We do not substitute its judgment for that of a respondent's counsel in matters of trial strategy. Accordingly, respondent is unable to establish that her counsel's performance was deficient.

Respondent's argument that petitioner failed to provide services tailored to her disability must similarly fail. Where petitioner requests termination in the initial petition, as it did in the instant case, there is no need to develop and consider a case service plan to reunite the family because the goal is termination and the trial court could terminate parental rights at the initial dispositional hearing. MCR 3.977 (E); MCL 712A.19b(4).

Finally, respondent challenges the court's termination of her parental rights under MCL 712A.19b(3)(g), (j), and (m). Evidence that respondent had failed to address her substance abuse during the several years petitioner assisted her and referred her to services, including drug rehabilitation programs and substance abuse counseling, supported termination of her parental rights under §§ 19b(3)(g) and (j). Evidence of respondent's voluntary termination of her parental rights to her son Aaron in April 2004 supported termination of her parental rights under § 19b(3)(m). Respondent contends that the court erred in relying upon § 19b(3)(m) because petitioner did not raise that statutory ground as basis for termination. However, because the petition alleged that respondent had voluntarily released her parental rights to Aaron, respondent was given adequate notice of the allegations and the proofs that she would have to present to overcome termination. *In re Perry*, 193 Mich App 648, 651; 484 NW2d 768 (1992); *In re Slis*, 144 Mich App 678, 684; 375 NW2d 788 (1985).

Furthermore, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Respondent failed to comply with any of the substance abuse programs to which petitioner had referred her and admitted that she had used drugs a week or two before the termination trial. Under these circumstances, the court did not err in its best interests determination.

Affirmed.

/s/ Karen M. Fort Hood  
/s/ Michael J. Talbot  
/s/ Stephen L. Borrello